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Krishnadas & Ors v Maniyam

HIGH COURT (IPOH) — CIVIL SUIT NO 178-82

PEH SWEE CHIN SCJ

B

11 AUGUST 1993

Land Law — *Sale of land — Priorities — Whether defendant's registered title subject to plaintiffs' prior equitable interests — Competing equities — Equitable interests could not compete with legal title*

C

Land Law — *Sale of land — Privity of contract — Claim for possession of land from person not privity to contract of sale — Whether there could be basis for claim for specific performance*

Contract — *Privity of contract — Land purchased by defendant from third parties — Plaintiffs suing defendant for specific performance — No privity of contract*

D

Land Law — *Indefeasibility of title — Whether plaintiffs' equitable interests came within s 340(4)(b) National Land Code 1965 — Whether s 340(4)(b) was an exception to indefeasibility of title — National Land Code 1965 s 340(4)(b)*

Statutory Interpretation — *Canons of construction — Ejusdem generis principle— When particular words follow general words — Approach court should take*

E

Words and Phrases — *'Remedy in personam'*

F

The first plaintiff was the vendor of certain lands, inter alia, Lot 3288 in the mukim of Hutan Melintang, District of Lower Perak ('the said lot'). The defendant was the registered owner of an undivided ⁶¹⁰/₇₇₀ share in the said lot which he had bought from eight chettiers who had earlier purchased it from the first plaintiff, while the remaining portion was still registered in the first plaintiff's name. The plaintiffs claimed that, prior to the sale of the said lot to the eight chettiers, the first plaintiff had sold some portions of the said lot to the other plaintiffs and they now claimed a declaration to the effect that: (i) the first plaintiff had sold only 44 poles of land to the eight chettiers; (ii) the purchase by the eight chettiers was subject to the rights of the plaintiffs; (iii) the difference in price between the approximate area and the area actually sold to the eight chettiers, be paid by the defendant; and (iv) the defendant do agree to sub-division of the said lot, and retransfer to the plaintiffs the excess between the area sold and area actually obtained by the defendant, with the delivery of documents of title.

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Held, dismissing the application:

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(1) The area of land bought by the eight chettiers from the first plaintiff was not 44 poles as alleged, but 1 acre 2 rods 33 poles. The sale and purchase agreement ('P1') stated so clearly, and no evidence could be utilized to contradict the stated area bought in the said lot as stated in P1. There could be no question of marginal error as the difference between the two areas was too great.

- (2) The sale and purchase agreements between the first plaintiff and the other plaintiffs ('the said agreements') were made after the sale and purchase agreement between the first plaintiff and the eight chettiers and therefore, the purchase by the eight chettiers was not subject to any such equitable interests. A
- (3) The said agreements were made between the first plaintiff and the other plaintiffs, so that there was no contractual relationship between the plaintiffs and the eight chettiers, nor between them and the defendant. There could, therefore, be no basis for any claim for specific performance or the like, by the co-plaintiffs against the defendant or the eight chettiers. However, though there was privity of contract between the first plaintiff and the eight chettiers, the first plaintiff did not seek specific performance against the eight chettiers. B
- (4) The defendant had been the registered owner of the said lot long before the filing of this action and his title was protected by s 340 of the National Land Code 1965 ('the Code'). The plaintiffs could not rely on s 340(4)(b) of the Code as being another exception to indefeasibility of title, for it would then make nonsense of the elaborately described exceptions of fraud, forgery, etc. Moreover, in considering a statute, where general words follow particular or specific words, such general words take their meaning from, and are presumed to be restricted to, the same genus as those particular or specific words, therefore the ejusdem generis rule applied. C
- (5) Assuming that the portions bought by the other plaintiffs were contained in the area bought by the eight chettiers in the said lot, in respect of which the defendant was their assign, the interest of the defendant facing the plaintiffs was no longer an equitable interest, but had long been elevated to a registered interest, having got on to the register. The co-plaintiffs' equitable interests could not compete with or prevail over the legal title of the defendant in the absence of any of the stated exceptions. D
- (6) The expression 'remedy in personam' simply means a relief granted against a person personally, and that, most often, is an injunction, mandatory or otherwise, enforceable by imprisonment for contempt for its default. E

Obiter:

A possible remedy in equity which the first plaintiff alone (but not the co-plaintiffs) could claim, could be a rectification of the contract (P1), on the ground of common mistake as to the portion in the said lot sold and transferred to the eight chettiers. However, this was not available to the first plaintiff as: (i) his statement of claim was not cast in this manner; (ii) there was no clear evidence as to which co-plaintiff bought which portion of the said lot; and (iii) the eight chettiers were not cited as co-defendants. F

[Bahasa Malaysia summary

Plaintif pertama adalah penjual beberapa bidang tanah, antara lain, Lot 3288, mukim Hutan Melintang, Daerah Hilir Perak ('lot itu'). Defendan

- A adalah tuan punya berdaftar ^{610/770} bahagian tidak dipecahkan dalam lot itu yang dibelinya daripada lapan orang ceti yang telah membelinya terlebih dahulu daripada plaintif pertama, manakala baki bahagian lot itu masih didaftarkan dalam nama plaintif pertama. Plaintif menuntut bahawa sebelum penjualan lot itu kepada ceti itu, plaintif pertama telah menjual sebahagian lot itu kepada mereka dan memohon suatu deklarasi bahawa: (i) plaintif pertama hanya menjual 44 pol tanah kepada lapan ceti itu; (ii) pembelian oleh lapan ceti itu tertakluk kepada hak plaintif; (iii) perbezaan harga di antara luas tanah yang dianggarkan dan luas yang sebenarnya dijual kepada lapan ceti itu dibayar oleh defendan; dan (iv) defendan bersetuju untuk memecah bahagikan lot itu dan memindahmilik kepada plaintif, lebihan antara luas tanah yang dijual dan yang sebenarnya diperolehi oleh defendan, bersama dengan penghantar-serahan suratikatan hakmilik.
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Diputuskan, menolak permohonan itu:

- D (1) Luas tanah yang dibeli oleh lapan ceti itu daripada plaintif pertama bukan 44 pol seperti yang dikatakan itu, tetapi 1 ekar 2 rod dan 33 pol. Perjanjian jual beli ('P1') jelas menyatakan demikian, dan tiada keterangan yang boleh digunakan untuk menyangkal luas kawasan yang dibeli di dalam lot itu seperti yang dinyatakan dalam P1. Soalan mengenai kesilapan marginal tidak timbul kerana perbezaan di antara kedua-dua kawasan itu terlalu besar.
- E (2) Perjanjian jual beli di antara plaintif pertama dan plaintif lain ('perjanjian tersebut') diikat selepas perjanjian jual beli di antara plaintif pertama dan lapan ceti itu, oleh itu pembelian oleh lapan ceti itu tidak tertakluk kepada sebarang kepentingan ekuiti yang sedemikian.
- F (3) Perjanjian tersebut diikat di antara plaintif pertama dan plaintif lain, oleh itu tiada perhubungan kontraktual antara plaintif dan lapan ceti itu, begitu juga di antara mereka dan defendan. Oleh yang demikian, plaintif sesama tidak mempunyai asas bagi menuntut pelaksanaan spesifik atau sepertinya, terhadap defendan atau lapan ceti itu. Bagaimanapun, walaupun terdapat priviti kontrak di antara plaintif pertama dan lapan ceti itu, plaintif pertama tidak menuntut pelaksanaan spesifik terhadap lapan ceti itu.
- G (4) Defendan menjadi tuan punya berdaftar lot itu lama sebelum tindakan ini difailkan dan hakmiliknya dilindungi oleh s 340 Kanun Tanah Negara 1965 ('Kanun itu'). Plaintif tidak boleh bergantung kepada s 340(4)(b) Kanun itu sebagai suatu kekecualian lain kepada hakmilik yang tidak boleh sangkal, kerana ini akan menjadikan kekecualian seperti fraud, pemalsuan, dan lain-lain yang diterangkan dengan panjang lebar itu tidak bermakna lagi. Lebih-lebih lagi, dalam mempertimbangkan sesuatu statut, di mana perkataan am menyusuli perkataan tertentu atau spesifik, perkataan am itu membawa makna serta dianggap terhad kepada jenis yang sama dengan perkataan tertentu atau spesifik itu, oleh itu rukun ejusdem generis terpakai.
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- (5) Andaikan bahagian yang dibeli oleh plaintif lain terkandung dalam bahagian yang dibeli oleh lapan ceti itu dalam lot itu, di mana defendan ialah pemegang serahhak mereka, kepentingan defendan yang menghadapi plaintif bukan lagi kepentingan ekuiti tetapi telah lama dinaikkan kepada kepentingan berdaftar, kerana ia dicatatkan dalam daftar hakmilik. Kepentingan ekuiti plaintif sesama tidak dapat bertanding dengan ataupun mengatasi hakmilik sah defendan tanpa kewujudan sebarang kekecualian yang dinyatakan.
- (6) Ungkapan 'remedy in personam' hanya bermakna relief yang diberikan terhadap seseorang secara peribadi, dan ia kerap kali merupakan suatu injunksi, mandatori atau sebaliknya, yang dikuatkuasakan oleh pemenjaraan untuk penghinaan mahkamah kerana pengingkarannya.

Obiter:

Suatu remedi ekuiti yang mungkin terbuka kepada plaintif pertama sahaja (tetapi bukan plaintif lain) ialah pembetulan kontrak (P1) atas alasan bahawa terdapat kesilapan bersama tentang bahagian dalam lot itu yang dijual dan dipindahmilik kepada lapan ceti itu. Tetapi ini tidak boleh dipohon oleh plaintif pertama kerana: (i) pernyataan tuntutan tidak menuntut sedemikian; (ii) tiada keterangan jelas mengenai bahagian yang dibeli oleh plaintif sesama; dan (iii) lapan ceti itu tidak dinamakan sebagai defendan sesama.]

[*Editorial Note*: The plaintiffs have appealed to the Supreme Court vide Civil Appeal No 02-182-93.]

Cases referred to

- 1 *Thames & Mersey Marine Insurance Co Ltd v Hamilton, Frazer & Co* (1887) 12 App Cas 484 (refd)
- 2 *Eton Rural District Council v Thames Conservators* [1950] Ch 540; [1950] 1 All ER 996 (refd)
- 3 *Canadian National Railways & Ors v Canada Steamship Lines Ltd & Ors* [1945] AC 204 (refd)
- 4 *Oh Hiam & Ors v Tham Kong* [1980] 2 MLJ 159 (refd)

Legislation referred to

National Land Code 1965 s 340

Gurbachan Singh (Bachan & Kartar) for the plaintiffs.
DP Vijandran (DP Vijandran Associates) for the defendant.

Peh Swee Chin SCJ: At the end of the hearing of this civil suit, the court dismissed the plaintiffs' claims with costs and from this dismissal, they have now appealed.

The first plaintiff was the vendor of certain lands, among which was specifically Lot 3288 in the mukim of Hutan Melintang, District of Lower

A Perak ('the said Lot 3288') and the second, third and fourth plaintiffs were the purchasers of some portions of the said Lot 3288 from the first plaintiff; (the first plaintiff is hereinafter called the vendor; and the other plaintiffs, the co-plaintiffs or second, third and fourth plaintiffs, respectively; and all of them as just plaintiffs, whenever the context requires them or any of them to be so described).

B The defendant is the registered owner of an undivided $\frac{610}{770}$ share ('the said area') in the said Lot 3288, while the other remaining undivided share is still registered in the name of the vendor. First, a bit of history about the said Lot 3288 will not be out of order. The vendor bought a rubber estate [then] known as Melintang Rubber Estate, which comprised ten documents of title, inclusive of that one in respect of the said Lot 3288, from the [then] registered owners. The rubber estate thus bought, had an area of 630 acres 3 rods 39 poles, excluding another area of slightly more than 10.5 acres already compulsorily acquired by the government. The vendor thus bought the Hutan Melintang Estate on 14 November 1960, for RM510,000 which, of course, shows the great purchasing power of money in those days. In P2, being the relevant sale and purchase agreement, the area of the said Lot 3288 appeared to be 2 acres 1 rod 25 poles. Some chettiers, the registered owners from whom the vendor bought the estate in the first place, were not the same chettiers about whom I would write a great deal later.

Then on 1 July 1963, by another agreement in writing dated 1 July 1963 (P1), the vendor sold, out of what he had purchased on 14 November 1960, an area of 260 acres 1 rod 39 poles, comprising portions of four different lots held under four documents of title. The purchasers this time were eight chettiers ('the eight chettiers'). One of the four lots aforesaid was the said Lot 3288 and the portion of 1 acre 2 rods 33 poles in it that was sold to the eight chettiers, was slightly more than $\frac{1}{2}$ of the said Lot 3288. The agreement dated 1 July 1963, P1, was the crucial agreement. A total area of 260 acres 1 rod 39 poles was bought by the eight chettiers for RM175,833.28. In addition to the area aforesaid that was purchased by the eight chettiers from the vendor, the vendor also sold, for a further sum of RM2,500, a factory (rubber factory), a smoke-house, a 'packing shed', a temple, a bathroom, a 'coolie line of ten units' and the 'water supply', all located in the area sold to the eight chettiers. The sale by the vendor to the eight chettiers of all as stated, was stated to be free from all encumbrances.

This crucial agreement had, annexed to it, a sketch plan also signed by the eight chettiers and the vendor, respectively. The plan was delineated or demarcated by marking the portion sold in red. The portion of the said Lot 3288 sold was seen to consist of one rectangle and part of another adjoining the rectangle with the number 3288 [marked on it]. In this marked portion of the said Lot 3288, marked in red, were three tiny rectangles which were shaded by slanting lines. These three shaded tiny rectangles could possibly indicate the locations of the factory and other structures, or they could be some other things as claimed by the vendor. P1, viz the crucial agreement, merely stated, with regard to the whole plan, in these words: '(marked "red" in the plan annexed hereto)', and did not elaborate further. After the brief history of the land, the court will now deal

with the statement of claim of the vendor and his co-plaintiffs. By the amended re-amended statement of claim dated 6 March 1993, basically they alleged as follows:

- (a) The area of land sold by the vendor to the eight chettiers was approximate, for example, that on completion of sub-division should the area be found different from the area sold, the difference would be paid by either party by adjustment of [the purchase] price at the basic price of RM675 per acre.
- (b) Prior to the sale of the area in question to the eight chettiers, except in the case of the fourth plaintiff, the vendor had sold portions of the area:
 - (i) to the third plaintiff, about $\frac{1}{2}$ acre; (ii) to one Arkany, $\frac{1}{2}$ acre, the said Arkany having resold the same to the fourth plaintiff on a later date, viz 3 January 1964; and (iii) a portion measuring 45ft x 100ft to the second plaintiff; but the agreements of sale to these were made subsequent to the sale to the chettiers.
- (c) The eight chettiers had actual notice of the respective areas of the co-plaintiffs and similarly, the defendant had actual or constructive notice of such rights and bought the area in question subject to the rights.
- (d) The defendant acquired, on 12 May 1973, the area in question which had, in turn, been bought by the eight chettiers earlier from the vendor, with an undivided share of $\frac{610}{770}$, representing the said area in the said Lot 3288, transferred to the defendant by the eight chettiers.
- (e) The vendor and the co-plaintiffs claimed a declaration to the effect that by P1, the vendor sold only 44 poles which comprised two portions of the said Lot 3288, and that the purchase by the eight chettiers was subject to the rights of the vendor and his co-plaintiffs, and the plaintiffs claimed an order that the difference in price be paid and that the defendant do further agree to sub-division of the said Lot 3288 and retransfer to the vendor and his co-plaintiffs, the excess obtained by the defendant, with the delivery of documents of title.

The defendant, by his defence referred to P1, denied all the allegations of the vendor and his co-plaintiffs and averred that they had no cause of action against him and asked for all their claims to be dismissed.

The vendor gave evidence, quite confusing evidence, though the matters in the statement of claim described above could dimly be gleaned. He pointed to two tiny shaded rectangles in the plan annexed to P1, as the portions sold by him to the eight chettiers. He said the two portions amounted to 1 acre 2 rods 33 poles (not 44 poles, as alleged in the statement of claim). He said he did not know the actual acreage of the said Lot 3288. He referred to the co-plaintiffs as 'sub-purchasers' and said that he sold 260 acres in four titles. The vendor looked very confused and smiled frequently. The second plaintiff gave evidence to the effect that he had purchased a portion of the said Lot 3288 for RM300 from the vendor by a written agreement (P7) dated 10 November 1991. The third plaintiff said she bought her portion from the vendor on 22 October 1963, and P10 was the agreement. The fourth plaintiff bought his own portion in 1971 by

- A an agreement dated 27 November 1971 from one Arkany — P13 was the agreement.

I have and will only set out very briefly the evidence of witnesses, most of which did not assist in the resolution of the issues to be decided in this case, as will be seen later.

- B The defendant gave evidence to the effect that he bought the portion (of 1 acre 2 rods 33 poles) of the said Lot 3288 on 17 May 1973, and an undivided $\frac{610}{770}$ share of the document in the said Lot 3288 was transferred to him by the eight chettiers, leaving a balance of $\frac{160}{770}$ undivided share still in the name of the vendor (first plaintiff). He described how he viewed what he bought before the purchase, etc, and about the court case he filed against the third plaintiff in the magistrate's court, about the fourth plaintiff staying in one of four buildings in the said Lot 3288, and about his action against the fourth plaintiff which he later withdrew.

- C I found that all agreements of sale and purchase made by the vendor's co-plaintiffs were made between them respectively and the vendor in each case, so that there was no contractual relation between the eight chettiers and the co-plaintiffs at all, viz no privity of contract between the vendor's co-plaintiffs and the eight chettiers; likewise, no such privity exists between the vendor's co-plaintiffs and the defendant. There could, therefore, be no basis for any claim for specific performance or the like, by the co-plaintiffs against the defendant or the eight chettiers.

- D I found that all sale and purchase agreements made by the vendor's co-plaintiffs and the vendor were all made after the date of the sale and purchase agreement made by the eight chettiers with the vendor, and therefore, the purchase by the eight chettiers of their area of land in the said Lot 3288 was not subject to any such equitable interests as could be created by the vendor for the vendor's co-plaintiffs by virtue of agreements among them. The defendant bought from the eight chettiers the area which the latter had bought from the vendor. There was some dispute though in regard to the second plaintiff, named Supaya as follows.

- E The second plaintiff claimed he had bought his interest, not on the date mentioned in his sale and purchase agreement, viz 10 November 1971 but on 3 November 1961 (viz earlier than the date of the eight chettiers' agreement). He relied on a receipt (IP8), bearing this date of 3 November 1961, issued allegedly to his name. I rejected this evidence, however, because the identity card number stated in the receipt as belonging to the payer with a similar name was '004280', whereas the second plaintiff's identity card number in his agreement dated 10 November 1971, was '4009121'; and at the time of trial, the second plaintiff was already 69 years old. Again, the receipt (P8) did not mention the said Lot 3288 at all. This area of 45ft x 100ft in P7, on the other hand, was therein stated to be 'situated on an area of land comprising of (sic) Lot 15, 17, 3288 and 2657 in the Mukim of Hutan Melintang ...'. Both the vendor and the second plaintiff, at the time of making this agreement, did not even know where that plot of land bought by the second plaintiff actually was. I therefore rejected the suggestion of the purchase of the interest by the second plaintiff being in 1961.

I found further that what the eight chettiers, by P1, bought from the vendor was not 44 poles as alleged, but 1 acre 2 rods 33 poles out of the total area of 2 acres 1 rod and 25 poles owned by the vendor then. P1 stated so clearly and no evidence could be utilized to contradict the stated area bought in the said Lot 3288 as stated in P1. There could be no question of marginal error as the difference between the two areas was too great.

I further found that the two shaded rectangles stated by the vendor to represent 44 poles in the annexed plan, as found inside that portion of the said Lot 3288 bought by the eight chettiers, could not be the only parts of the said Lot 3288 bought by the eight chettiers. Such evidence also would contradict P1.

I found further that either the vendor sold to the co-plaintiffs, portions in the said Lot 3288 other than the portion sold to the eight chettiers, or portions of said Lot 3288 covered by the sale to the eight chettiers, twice, viz he sold the same, first, to the eight chettiers and then again, to his co-plaintiffs, and in the event of the latter case, the vendor had nothing to sell when he purported to sell to his co-plaintiffs.

I found that the defendant had, long before the filing of the present action, been the registered owner of what he bought from the eight chettiers who had, in turn, earlier bought from the vendor, viz an undivided $\frac{610}{770}$ share, in the said Lot 3288.

It was briefly submitted, among other things, for the defence, that the defendant's title, viz the $\frac{610}{770}$ undivided share in said Lot 3288, was protected by s 340 of the National Land Code 1965 ('the Code'), because of indefeasibility of title conferred by s 340. This proved to be the pivotal point. The reply of the plaintiffs was even briefer and it was that, though there were none of the circumstances or exceptions to indefeasibility such as fraud, misrepresentation, forgery, etc, as set out in s 340, applying to this case for the benefit of the plaintiffs, this case came under s 340(4)(b) of the Code ('para (b)'), so as to destroy such indefeasibility of title because, it was submitted vaguely, the vendor's co-plaintiffs were beneficial owners (of whatever portions in whatever parts of the said Lot 3288).

The vendor and his co-plaintiffs, therefore, relied on para (b) to surmount the formidable indefeasibility of title by suggesting that their case fell within para (b), practically making para (b) an extra exception in addition to fraud, etc. Could s 340(4)(b) be another exception to such indefeasibility of title? The whole of s 340 is set out below for ease of reference:

Registration to confer indefeasible title or interest, except in certain circumstances.

- (1) The title or interest of any person or body for the time being registered as proprietor of any land, or in whose name any lease, charge or easement is for the time being registered, shall, subject to the following provisions of this section, be indefeasible.
- (2) The title or interest of any such person or body shall not be indefeasible—
 - (a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or
 - (b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

- A (c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.
- (3) Where the title or interest of any person or body is defeasible by reason of any of the circumstances specified in sub-section (2)—
- B (a) it shall be liable to be set aside in the hands of any person or body to whom it may subsequently be transferred; and
(b) any interest subsequently granted thereout shall be liable to be set aside in the hands of any person or body in whom it is for the time being vested:
- C Provided that nothing in this sub-section shall affect any title or interest acquired by any purchaser in good faith and for valuable consideration, or by any person or body claiming through or under such a purchaser.
- (4) Nothing in this section shall prejudice or prevent—
- D (a) the exercise in respect of any land or interest of any power of forfeiture or sale conferred by this Act or any other written law for the time being in force, or any power of avoidance conferred by any such law; or
(b) the determination of any title or interest by operation of law.

In my view, it is quite impossible to regard para (b) as another such exception to indefeasibility. For one thing, the words are very vague, viz 'operation of law', which mean the carrying into effect of the law or working of the law. The scope of the words is practically unlimited, given the ordinary meaning of the words and without their having any further word of limitation. If counsel's contention is carried to its logical conclusion, the indefeasibility can be destroyed on any legal ground at all. It will then make nonsense of the elaborately described exceptions of fraud, forgery, etc.

E Above all, it will practically destroy the central theme or the foundation of the Torrens system.

Again, another reason is that in considering a statute, where general words follow particular or specific words, such general words take their meaning from, and are presumed to be restricted to, the same genus as those particular or specific words, therefore the ejusdem generis rule applies.

G Please see *Thames & Mersey Marine Insurance Co v Hamilton Frazer & Co*;¹ *Eton Rural District Council v River Thames Conservators*.² To avoid confusion, I must hasten to add that this rule does not apply, however, when it is the other way round, viz where initial general words are followed by particular or specific words, for then such specific or particular words would not detract from the generality of such starting general words; please see *Canadian National Railway v Canadian Steamship Lines Ltd*.³

H The words, in my view, are redundant or superfluous and they merely declare what is self-evident, viz that the indefeasibility would be terminated if any of the stated forgery, etc, is proved. Precision of language is not always found in statutes, or for that matter, in documents likewise prepared by sometimes very experienced lawyers; or perhaps draftsmen of legislation prefer to err *ex abundanti cautela* rather than from the lack of caution.

I The tenor of the learned counsel's submission about 'competing equities', about equity prevailing in case of conflict between law and equity, and

about vendor and his co-plaintiffs being beneficial owners, seemed to the court to be a clear invitation to exercise the court's equity jurisdiction to intervene for the plaintiffs' benefit and I had no doubt that such was the intention of the learned counsel. I feel that I should not treat such imprecise submission by ruling just as imprecisely, that no ground existed for resorting to the [court's] equity jurisdiction.

There have always frequently been strong reservations about equity's role when it crosses the path of the Torrens system on which the Code is based, with the frequent use of words like 'distorting' or even 'supplanting' the Code in whispered terms from many quarters; strongly reminiscent of those olden days in the legal system when the common law courts such as Courts of Common Pleas, King's Bench and Exchequer had such strong reservations against the Court of Chancery before the fusion of functions of all the courts. In my view, the true nature of equity's intervening role in transactions covered by the Code has been explained succinctly by Lord Russel of Killowen in *Oh Hiam & Ors v Tham Kong*⁴ as follows [at p 164]:

Apart from authority their Lordships would not expect that the intervention of equity by a remedy in personam based upon a transaction to which the plaintiff and defendant were parties would be ousted by such provisions. The Torrens system is designed to provide simplicity and certitude in transfers of land, which is amply achieved without depriving equity of the ability to exercise its jurisdiction in personam on grounds of conscience. In the instant case the defendant could have shown an indefeasible title had he sold Lot 3660, a step which he could not take because he undertook to the court not to: the court could have granted an injunction against sale, and that could scarcely have been described as an order inconsistent with his indefeasible title. If the registered proprietor were a trustee, his indefeasible title would not have precluded intervention by the court in execution of the trust: under the then Land Code there was no express provision for registration as trustee. The indefeasible title would not preclude an order for specific performance of a contract for sale by the proprietor. All these are instances of equity acting in personam, and indeed the order in the instant case may be described as an order in personam that the registered proprietor should defeat his own title.

Not being didactic but, from my experience in often listening to submissions in court, the expression of 'remedy in personam' does not appear to be fully realized semantically. The preposition 'in' means 'against' in Latin, so that the expression simply means a relief granted against a person personally, and that, most often, is an injunction, mandatory or otherwise, enforceable by imprisonment for contempt for its default. Thus, in the example given by Lord Russell, the registered proprietor could not sell, not because his indefeasible title was impaired, but because equity stopped him from doing so.

The court would try to fit the case of the plaintiffs into any of those several pigeon holes whereby equity could possibly step in to intervene on their behalf.

First, about learned counsel's vague submission about 'competing equities', and about equity prevailing over common law. Putting it at the highest, I presumed the reference was to the equitable interests which the vendor's co-plaintiffs could have acquired on buying, by those agreements,

- A various portions of the said Lot 3288. Assuming, only for argument, that such various portions were contained in the area bought by the eight chettiers in the said Lot 3288, in respect of which the defendant was their assign (viz assignee), the interest of the defendant facing the plaintiffs was no longer an equitable interest, but had long been elevated to a registered interest, having got on to the register. The vendor's co-plaintiffs' equitable interests could not compete with or prevail over the legal title of the defendant in the absence of any of the stated exceptions, as such absence was conceded by the learned counsel for the plaintiffs, correctly from the evidence.

- C Regarding the most well-known equitable remedy of specific performance with an injunction in aid of it, if necessary, as stated earlier, there was no privity of contract between the vendor's co-plaintiffs and the eight chettiers, and consequently, in fact, none between them and the defendant who was the assignee of the eight chettiers of that area in the said Lot 3288, as described in P1.

- D There was privity of contract between the eight chettiers and the vendor, but it was crystal clear that the vendor did not seek specific performance against the eight chettiers.

- E What, in fact, the vendor and his co-plaintiffs sought, were declarations that the purchase by the eight chettiers was subject to the prior rights of the vendor's co-plaintiffs, etc. How was the court to regard these declaratory prayers? In form, this action was dressed like one for the discretionary remedy of the court to declare a legal right on given and agreed facts but, in this case, there were no such agreed or given facts. In fact, the parties herein were embroiling themselves in a dispute over a number of facts. Therefore, the nature of this action was definitely not of this type. In the end, this court could only regard these prayers as framed simply for asking for decisions from the court on facts and law.

- F The next and the last possible remedy in equity which the vendor alone (but not the co-plaintiffs) could claim, could be a rectification of the contract (P1), on the ground of both parties being under a common mistake as to the portion in the said Lot 3288 sold and transferred to the eight chettiers. This could not be available to the vendor for his statement of claim was not cast in this manner and, even if it was, there was no clear evidence at all, as to which co-plaintiff bought which portion in which part of the said Lot 3288. Even if there were such clear evidence, the eight chettiers had not been cited as co-defendants, so that the issue of common mistake could never be aired. There was also no way that equity could intervene for the plaintiffs.

- H It was a sobering thought for the court, that our Parliament came fast and thick with anti-fragmentation laws in regard to estates sold in rather a hurry by British owners in those days, otherwise all our courts would have been clogged with cases similar to the one at hand for a long time indeed.

- I Because of what has been said above, I was driven to dismiss the plaintiffs' claim with costs.

Application dismissed.